

in respect of the 10,000 Seafeld Amalgamated Rubber Ltd. shares, that Pinder and Chen Jan Jee had not orally agreed on August 6, 1971 to buy these shares. In my judgment, the clear inference from the appellant's explanation is that the appellant must have known that these two gentlemen had orally agreed on the sale and purchase of these shares in December 1971 and not on August 6, 1971. In my judgment the appellant acted as he did, not because he had no reason to doubt the truth of what Pinder told him as to the date of the oral agreement but because, in the appellant's own words, "Pinder was at that time at the height of his power and as his broker (I) was obliged to write that letter and backdate the contract".

Next, the appellant contends that having regard to the provisions of section 17(1) of the Securities Industry Act, 1973, the Deputy Registrar could not lawfully rely on matters prior to "the relevant period" to cancel the appellant's licence. The argument is that as the contract notes were issued in December 1971 and the Securities Industry Act, 1973 did not come into force until May 1973 the Deputy Registrar was wrong in law and in fact in finding that the appellant is not a fit and proper person to hold a dealer's representative's licence. I disagree. The question for the Deputy Registrar to decide was whether or not to cancel the appellant's licence and the empowering section in the Act is not section 17(1) but section 23. In my opinion section 23 does not limit the Deputy Registrar to have regard only to facts which fall within "the relevant period" specified in section 17(1).

Accordingly, I am of the opinion that on the facts before him the Deputy Registrar's decision to cancel the appellant's licence was correct. The next question is whether I ought to uphold the Deputy Registrar's decision to permanently disqualify the appellant from holding a dealer's representative's licence.

There appears to me to be no element of dishonesty or criminality in the acts of the appellant to merit the extreme penalty of permanent disqualification and in those circumstances I would set aside the order of the permanent disqualification. I do not propose to substitute therefor a specified period as temporary disqualification and any future application by the appellant for a dealer's representative's licence must be considered by the Registrar in accordance with the relevant provisions of the Act. The appellant must pay the costs of the appeal.

Order accordingly.

Solicitors: Rodyk & Davidson.

A MALAYSIAN REPORTS

TEH BEE v. K. MARUTHAMUTHU

[F.C. (Ali Ag. C.J. (Malaya), Raja Azlan Shah and Wan Suleiman F.J.J.) January 6, 1977]

[Kuala Lumpur — Federal Court Civil Appeal No. 163 of 1975]

B *Land Law — Claim by registered proprietor for possession of land — Registered title conclusive evidence — Infeasibility of title — National Land Code, ss. 42, 78(3), 81, 89 and 178.*

The appellant claimed possession of a piece of land of which she was the registered proprietress. The claim was based on trespass. The respondent resisted the claim, the principal ground being that the qualified title registered in the name of the appellant was null and void. The trial Magistrate entered judgment in favour of the appellant. On appeal, Ajaib Singh J. held that when the appellant was registered as proprietress the approval of alienation of the land to her had already lapsed and therefore it was *ultra vires* of the State authority to alienate the land to her. The appellant appealed.

Held, allowing the appeal: (1) the fact that the appellant was registered as proprietress necessarily raised the inference that the State Authority on payment of the premium had given fresh approval for the alienation of the land to her;

(2) the fact that the register document of title was in the name of the appellant was conclusive evidence that the title to the land was vested in the appellant;

(3) under the Torrens System the register is everything and it would be wrong to allow an investigation as to the right of the person to appear upon the register when he holds the certificate of title.

[Editorial Note: In this case the Federal Court did not touch on some of the important matters which Ajaib Singh J. discussed in his decision. Ajaib Singh J. in his judgment brought out the irregularities practised in some land registries. The publication of his judgment with the Federal Court decision might help to rectify those irregularities by way of some administrative directives by those in authority. These irregularities appear to be carried on in blatant disregard to the provisions of the Land Code relating to the approval of land titles. In his judgment the learned judge also discussed the position of a holder of a T.O.L. after its cancellation or expiration.]

Cases referred to:-

- (1) *R. v. McDevitt* (1917), 39 O.L.R. 138; 42 Digest 710, 1278i.
- (2) *B. v. B.* [1961] 2 All E.R. 396.
- (3) *Khew Ah Bah v. Hong Ah Mye* [1971] 2 M.L.J. 86.
- (4) *Creelmon & Anor. v. Hudson Bay Insurance Company* [1920] A.C. 194.
- (5) *Alan Frederic Frazer v. Douglas Hamilton Walker* [1967] 1 A.C. 569.

FEDERAL COURT.

Amir Ismail for the appellant.

A.K.J. D'Cruz for the respondent.

In the High Court *A.K.J. D'Cruz* appeared for the appellant/respondent and *S.F. Leow* for the respondent/appellant. The following grounds of judgment were delivered on July 8, 1976:

Ajaib Singh J.: This was an appeal from the decision of the learned magistrate ordering the appellant to deliver to the respondent vacant possession of land comprised in H.S.(D) 1089 P.T. No. 7 in the District of Seremban. In the statement of claim filed in the lower court the respondent averred that she was the registered proprietor of the land concerned

which was alienated to her by the state authority. She averred further that the appellant had occupied a hut on the said land and alleged that the appellant was a trespasser. She had made several verbal requests and demands on the appellant to quit the land but he had failed to do so. Thereafter on or about January 5, 1973 the respondent issued a notice to the appellant to quit her land within two weeks from receipt thereof but the appellant had failed to comply with the notice to quit and she alleged that she had thus been deprived of the use of the land which the appellant had unlawfully occupied and that she had thereby suffered damage. She accordingly claimed vacant possession of the land, damages and costs of the action.

In his amended defence filed in the proceedings the appellant denied that the respondent was the registered proprietor of the land concerned. He averred that he was the lawful holder of a temporary occupation licence in respect of the land and had been in occupation of this land as such since 1952. He contended further that the issue of H.S.(D) 1089 P.T. No. 7 to the respondent by the authorities was unlawful, null and void. The appellant contended that the respondent's title was invalid as it was obtained by fraud, misrepresentation and by unlawful means. The appellant had paid the licence fees for the occupation of the land till the end of 1967 and had paid assessments on the building erected by him on the land till December 31, 1973. The respondent knew at all material times that the appellant was the lawful occupant of the land and she accepted the alienation of the state land from the state authority subject to the incidence attaching to the land and she was thereby estopped from denying the appellant's right to occupy the said land.

The appellant averred further that since 1967 he had at his own expense made improvements to the building that stood on the land. He had therefore acquired an equity in the land and should be fully and effectively compensated by the respondent before she could be allowed to take possession of the land. The appellant denied that the respondent had made several requests and demands on him to quit the said land and he denied that he was a trespasser. With regard to the notice to quit the appellant averred that it was unlawful and of no effect. He also denied that the respondent had been deprived of the use of the land and suffered damage. He further stated that the title of the land was in issue and the court therefore had no jurisdiction to hear the case.

Three witnesses gave evidence in support of the respondent's case. The first was the Deputy Collector of Land Revenue who was also gazetted as Registrar of Titles, Negeri Sembilan. He referred to the particulars of H.S.(D) 1089 P.T. No. 7 in the District of Seremban and said that the registration of this land was effected on January 24, 1968 in the name of the respondent. This was not a continuation of any old or former title and the respondent was the first and only registered proprietor. The title was not a permanent one but was a qualified title. The respondent in her evidence said that she was seventy-one years of age and that her grandson was managing

A the affairs of the piece of land concerned which was registered in her name. She said that she knew the appellant who was in occupation of the land but had no dealings with him as she was not managing the affairs of this land. In cross-examination she said that she had bought the land a long time ago and that she could not remember how much she had paid for it nor could she remember whether the appellant was in occupation of the land when she bought it. She said that she could not remember many things as she was not well and was suffering from high blood pressure. The third witness for the respondent was her grandson. He said that he knew all the circumstances under which his grandmother became the registered owner of the land. The land was given to her as compensation for her other land which was acquired by the government. His grandmother had applied for a sub-division of her own land in Lot 2599 Rasah for building purposes. The planning authority asked his grandmother to surrender certain portions of Lot 2599 for roads and drains in return for state land. The land which was then given to his grandmother was registered in her name on January 24, 1968. He was not aware whether the appellant was in occupation of the land before it was alienated to the respondent but he came to know that he was there after the registration of the land in the name of the respondent. The Assistant District Officer had told him that the appellant was in occupation of the land on a temporary occupation licence and that the licence had already been cancelled.

Two witnesses gave evidence for the appellant. First was an authorised representative of the Collector of Land Revenue. He said that by letter dated April 10, 1961 the respondent applied for a sub-division of her land in Lot 2599 Rasah. The application was approved subject to a condition that the respondent should surrender certain portions of Lot 2599 for a road reserve. Subsequently the respondent applied for the alienation of the land comprised in temporary occupation licence No. 850. This application was approved by the state authority subject to the payment of a premium and other items of land revenue which came to a total sum of \$4,327.50. Form 5A was served on the respondent on November 17, 1966 and in accordance with the provisions in that form she was required to pay the sum of \$4,327.50 within three months from the date mentioned in Form 5A which was November 16, 1966. The witness said that this amount was not paid in time and therefore the approval lapsed. He said that the respondent paid the sum on October 12, 1967 which was about eight months after the expiry of the three months allowed in Form 5A. Earlier on January 15, 1967 the respondent had applied for exemption from payment of the premium but this was rejected. This witness further stated that the land in dispute was approved to the appellant on a temporary occupation licence on June 19, 1954 and that when the application for this piece of land from the respondent was submitted to the state authority for approval no mention was made that it was already given out on a temporary occupation licence to the appellant.

The appellant in his evidence said that he had been in occupation of the land comprised in tem-

porary occupation licence No. 850 since 1954 and from that year till 1967 he had been renewing the temporary occupation licence. He had also paid all the Town Council dues over the years. It was vacant land when he went into occupation and he had erected a shop house with plank walls and zinc roof at a cost of \$2,700. Later he obtained water and electricity supplies at a cost of another \$400 and in 1970 he carried out repairs to the building by changing planks and zinc and patching up the floor with cement at a cost of \$3,500. In 1968 when he went to renew his temporary occupation licence he was informed that the land had been alienated to another person. He himself had applied for the alienation of the land in 1965. He had received a reply that his application was under consideration and he was hoping until 1968 that his application would be approved. He had used the building as a coffee-shop at the beginning and later as a provision shop as well. In cross-examination he said that he had obtained receipts in respect of expenses incurred by him on the improvement of the land but he had lost them.

On appeal before me Mr. A.K.J. D'Cruz for the appellant submitted first that the learned magistrate had no jurisdiction over the matter in dispute as it involved the title to the land, secondly that the respondent's title was null and void as it was obtained unlawfully in contravention of section 81 of the National Land Code because she had failed to pay the required sum of \$4,327.50 within the stipulated period of three months thus causing the approval to the alienation of the land to lapse under section 81(2) of the National Land Code and thirdly that the appellant had acquired an equity in the land which entitled him to be suitably compensated for the expenses he had incurred on the land should he be ordered to be evicted. Mr. S.F. Leow for the respondent submitted that the application for the approval of the land did not lapse as the alienating authority had a discretion to extend the time for the payment of the sum of \$4,327.50 under section 81(2) of the National Land Code. He also submitted that sections 92 and 176 of the National Land Code provided for the indefeasibility of title and as the respondent was the registered owner of the land the appellant had no right to sue her. The appellant was a trespasser. With regard to the submission that the learned magistrate had no jurisdiction Mr. Leow submitted that during the hearing of the action in the lower court counsel who was then appearing for the appellant was given an opportunity to apply to the court for the transfer of the case to the High Court but he had not done so.

In my view the submission of Mr. D'Cruz as to jurisdiction had little merit in it. This point was raised in the pleadings in the lower court but it was not pursued any further by the appellant and as far as could be gathered from the appeal record it appeared to me that there was no *bona fide* question of title involved. The claim against the appellant was purely for possession of the land and mesne profits. With regard to the submission that the respondent had obtained the title by unlawful means I agreed that in approving the alienation of the land and subsequently alienating that land under qualified title in

favour of the respondent the state authority had acted contrary to the provisions of sections 81 and 180 of the National Land Code and the question thus arose whether a contravention of these sections rendered the alienation of the land under qualified title null and void and of no effect.

The state authority is empowered to alienate state land by virtue of the provisions of sections 41 and 42 of the National Land Code and section 41(a) provides that these powers shall be exercised in such manner and to such extent as is authorised by the provisions of the Code and not otherwise. Section 78(2) provides that the alienation of state land under qualified title shall be effected in accordance with the provisions of Chapter 2 of Part Eleven which has three sections — 180, 181 and 182. The first step towards acquiring the alienation of state land under final or qualified title is to obtain the approval of the state authority to the alienation of the land. When the state authority approves the alienation of the land certain sums of money become payable to it as land revenue under section 81(1). The Collector then issues a notice in Form 5A under section 81(2) requiring the intended proprietor to pay to the Collector those sums of money within such time as may be specified in the notice. If any such sum is not paid within the specified time the approval of the state authority to the alienation of the land to the intended proprietor lapses under section 81(2) which reads as follows:—

"81. (1) x x x x
(2) As soon as may be after any sums have become due in respect of any land by virtue of sub-section (1), the Collector shall, by notice in Form 5A, require the intended proprietor to pay them to him within the time specified in that behalf in the notice; and if any such sum is not so paid within the specified time, the approval of the State Authority to the alienation shall thereupon lapse."

In the present case when the state authority approved the alienation of the land to the respondent a total sum of \$4,327.50 became due to the state authority as land revenue. Form 5A was served on the respondent on November 17, 1966 whereby she was required to pay the sum within three months from the date stated in the notice which was November 16, 1966. It may be observed here that under rule 7 of the Negeri Sembilan Land Rules, 1966 the period to be specified in Form 5A within which to pay the items of land revenue is "three months (together with any extension not exceeding three months, which may be granted by the Collector in any particular case)". Be that as it may, the respondent paid the sum of \$4,327.50 on October 12, 1967 well past the time allowed to her in Form 5A which meant that at the time of making this payment the approval of the state authority to the alienation of the land had already lapsed.

After the approval of the state authority to the alienation of land has been obtained and the items of land revenue paid within time the procedure to be followed and the powers of the state authority to be exercised for the alienation of the land under qualified title are set out in section 180 as follows:—

"Applications for alienation under qualified title.

180. (1) Any person or body to whom the alienation of any land has been approved by the State Authority, whether

under this Act or under the provisions of any previous land law, may at any time apply in writing to the Collector for its alienation to him under qualified title.

(2) Every such application shall be accompanied by the fee for the time being prescribed:

Provided that no fee shall be payable if the approval of the State Authority was given under the provisions of a previous land law and the application is made by a person who, pursuant to the approval, was at the commencement of this Act lawfully in occupation of the land in expectation of title.

(3) No such application should be entertained unless and until the items of land revenue specified in paragraphs (a) to (d) of sub-section (1) of section 81 have been paid in respect of the land."

It will be seen that under section 180 of the National Land Code an application for the alienation of state land under qualified title can be made only by a person or body to whom the alienation of the land has been first approved by the state authority under the Code or under the provisions of any previous land law. It will be noted further that section 180(3) provides that no such application for the alienation of state land under qualified title shall be entertained unless and until the items of land revenue specified in section 81(1) have been paid in respect of the land and it goes without saying that such sums of land revenue can be lawfully paid and received only until such time as the approval of the alienation of the land is in existence and not after its lapse under section 81(2).

Under section 78(3) of the National Land Code the alienation of state land under qualified title takes effect upon the registration of a register document of qualified title pursuant to the provisions of sections 177 and 178 referred to in section 181 which is one of the three sections in Chapter 2 of Part Eleven of the Code. Section 89 of the National Land Code which provides for the conclusiveness of a register document of final title and section 92 which declares its indefeasibility are extended to apply to a register document of qualified title as well by virtue of sections 178(3) and 176(2) of the Code. Indefeasibility of title is the hall-mark of the Torrens system of registration of land titles and our Land Code which is based on this system provides, with certain exceptions, for the indefeasibility of registered titles or interests in land and registered leases, charges and easements under section 340 as follows:—

"Registration to confer indefeasible title or interest, except in certain circumstances.

340. (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible —

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section 2—

(a) it shall be liable to be set aside in the hands of any per-

son or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent —

(a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or

(b) the determination of any title or interest by operation of law."

It will be seen that the act of registration *per se* is paramount and when registered a title becomes indefeasible and remains so unless and until declared otherwise by the court which can only be done if the title can be successfully challenged within the somewhat restricted scope of the exceptions stated in section 340. Non-compliance with the statutory provisions

relating to the mode of acquiring the alienation of state land may not render a registration invalid but if the contravention is of a provision which is vital and fundamental to the very existence of the power of the state authority under which it may approve the alienation of state land, in other words, if it is not a mere non-compliance with procedure but where the state authority purports to act in pursuance of a power

for which no provision is made anywhere in the National Land Code then I think that the registration of title which follows the unauthorised act of the state authority is illegal and a nullity. In the present case before me the state authority proceeded to entertain an application for the alienation of land under qualified title when the National Land Code made no provision

empowering the state authority to do so. The earlier approval of the state authority to the alienation of the land had lapsed. It was dead to all intents and purposes. Yet in the absence of any provision in the Code empowering the state authority to do so it went ahead and entertained and approved the application for the alienation of land under qualified title when

at the same time the respondent herself was incompetent to make any such application as she was no longer a person to whom the alienation of the land had been approved within the meaning of section 180(1) of the Code. Sub-section (3) of section 180 states in no uncertain terms that no such application shall be entertained unless and until the items of land

revenue specified in section 81(1) have been paid in respect of the land and as I have mentioned earlier those sums of land revenue could be lawfully paid only during the lifetime of the approval of the state authority to the alienation of the land and not after its demise under section 81(2). The payment which was made after the approval had lapsed could certainly not have the effect of reviving the approval.

It was incumbent on the respondent, if she was still interested in the land, to start all over again by making a fresh application. The provisions of sections 41(a), 78(2), 81(2) and 180 of the National Land Code are not to be trifled with. They are mandatory and give no discretion or authority whatsoever to the state authority to disregard them in order to resuscitate

a lapsed approval. As was stated by Middleton J. in the Canadian case of *R. v. McDevitt*⁽¹⁾ referred to by Scarman J. in the case of *B. v. B*⁽²⁾ —

"The commands of the legislature are peremptory. It is intended that they shall be obeyed. The legislature may simply trust to its officers to yield implicit obedience, or may, if it sees fit, attach a penalty as punishment for disobedience. In either case this is a matter between the legislature and its officers. In the event of the officer disobeying, the question remains as to the effect of the disobedience on the thing done. Was the matter in which there was disobedience so essential and fundamental that the non-compliance with the statute rendered it void, or was it so subsidiary and collateral that it may safely be ignored?"

As a matter of public policy clear and obligatory provisions of the National Land Code particularly those which provide for the very basis of the powers of the state authority to approve the alienation of state land ought to be given effect and should not be simply sacrificed before the altar of indefeasibility of title. Giving a free hand to those who deal with applications for the alienation of state land, to allow them to disregard the clear and mandatory provisions of the National Land Code and to let them exercise powers which do not exist under the Code just because they may wish to accommodate some particular applicant can result in many adverse effects on the administration in the land registries leading to corrupt practices and gross injustices.

I held that in the present case the alienation of the land under qualified title to the respondent did not involve a mere irregularity or non-compliance with the statutory procedure relating to the method of acquiring alienation of qualified title but that the state authority had acted *ultra vires* the National Land Code and therefore the alienation of the land under qualified title was illegal and a nullity. Consequently, the conclusiveness of title and the indefeasibility provisions in the Code were rendered irrelevant and inapplicable. In the event, I held that when she instituted proceedings against the appellant the respondent had no *locus standi* in the matter as she was not a lawfully registered proprietor of the land. I accordingly allowed the appeal with costs.

With regard to the submission that the appellant had acquired an equity in the land Mr. D'Cruz cited the case of *Khew Ah Bah v. Hong Ah Mye*⁽³⁾ where on the facts of that case and in the light of decided authorities of the Privy Council Choor Singh J. held that —

"Where a landlord has let vacant land with permission to the tenant to build thereon and the tenant has expended money in putting up a building on the land it is not sufficient for the landlord to give a valid notice to quit in order to recover possession of his land. The tenant in such a case has a tenancy coupled with an equity — an equitable right to remain on the land so long as he continues paying the ground rent. Not only must the tenancy be validly determined but the equity must also be satisfied by the landlord before he can recover possession. It is for the court to say, on the facts and circumstances of the case, how the equity may be satisfied."

The soundness of the passage quoted above cannot be denied but with respect I failed to see how the case of *Khew Ah Bah* could be relevant and applicable to the present case before me. There was no relationship here of landlord and tenant or of any other kind which might give rise to any rights or obligations as between the appellant and the respondent in rela-

tion to the land in question. The holder of a temporary occupation licence obtains no legal or equitable rights over the land he occupies by virtue of the licence other than to occupy the land temporarily from year to year if he can have his licence renewed annually and upon such terms and conditions as may be stipulated in the licence. Temporary occupation licences are issued under sections 66 and 67 of the National Land Code for a term expiring not later than the end of the calendar year in which they commence except that a temporary occupation licence combined with a permit to remove rock material may be issued for a longer period under section 69. There is provision for temporary occupation licences to be renewed annually but there is no obligation on the part of the authorities to grant a renewal of a temporary occupation licence for any subsequent year. In accordance with the terms and conditions which appear in the form of a temporary occupation licence the licence may be cancelled immediately, and without payment of compensation, upon the breach of any provision to which the licence is subject but otherwise a subsisting licence may be cancelled at any time before the date of expiry only upon payment of compensation by the state government to the licensee which is to be agreed or determined in accordance with the provisions of section 434 of the National Land Code. But in no circumstances however can a person who has occupied land on a temporary occupation licence acquire a right to be compensated by a subsequent holder of a temporary occupation licence of the land or by a subsequent registered proprietor thereof under qualified or final title for any expense that he might have incurred over the land during the period in which he occupied it under a temporary occupation licence.

From the above judgment the respondent/appellant appealed to the Federal Court. In the Federal Court the following judgment was delivered:

Ali Ag. C.J. (Malaya): In Civil Action No. 238/73 filed in the Magistrate's Court at Seremban the appellant, Teh Bee (f) claimed from the respondent, K. Maruthamuthu, vacant possession of a piece of land of which she was at all material times the registered proprietor or proprietress. Her claim was based on trespass for which damages were prayed for and as usual she also asked for costs.

The respondent who was in occupation of the land resisted the claim on various grounds. The principal ground was that the qualified title registered in the name of the appellant is null and void. The true reason for this contention was not clearly stated in the defence statement. But from the notes of arguments at the trial the defence contention seems to be that on the evidence the approval of the state authority for the alienation of the land to the appellant had lapsed under section 81(2) of the National Land Code (hereinafter referred to as the Code) by reason of the appellant's failure to pay within the specified time the sum of \$4,327.50 due to the state authority and that as there was no approval of alienation existing at the time her registration as proprietress is null and void.

The trial magistrate on the evidence before him found that *prima facie* the appellant is the owner of

the land. Thereupon he entered judgment in her favour and ordered the respondent to vacate the land within 3 months. No order for damages was made and as regards costs each party was ordered to pay his or her own costs.

The respondent appealed to the High Court. Ajaib Singh J. upheld the respondent's contention and allowed the appeal. His conclusion was clearly based on the evidence of DW2, Encik Mustapha bin Haji Alias who giving evidence as the representative of the Collector gave an account of events or circumstances prior to the appellant's registration as proprietress of the land sometime in April 1968. He said the appellant's application for alienation was approved sometime in 1966 and that she had been served with notice in Form 5A under section 81(2) of the Code requiring her to pay the sum of \$4,327.50 within 3 months. She did not pay. However, he said sometime in January 1967 she wrote to the Collector asking that she be exempted from paying the premium which amounted to a little over \$4,000. Her request was referred to the Executive Council but was turned down. In October 1967 she paid the full amount.

On the evidence as stated and taking the view that under rule 7 of the Negeri Sembilan Land Rules, 1966 the appellant could not have more than six months within which to pay the amount the learned judge concluded that when the appellant was registered as proprietress in April 1968 the approval of alienation of the land to her had already lapsed by reason of section 81(2) and therefore it was *ultra vires* the powers of the state authority to alienate the land to her.

Under section 40 of the Code all state lands are vested in the State Authority, i.e. the Ruler or Governor of a State, as the case may be. The State Constitution provides that the Ruler or Governor shall act on the advice of the Executive Council which deals with applications for alienation of State lands. Section 42 of the Code gives the State Authority wide powers to dispose of State lands. In terms of section 78(3) alienation of State land shall take effect upon the registration of a register document of title.

At the trial when the Registrar of Titles, PW1, was giving evidence, appellant's counsel asked that the register document of title be put in as evidence but counsel for the respondent did not think it necessary saying that it was sufficient if a certified copy of the extract was put in. The importance of the register document of title in terms of section 178(3) of the Code read with section 89 is that it is conclusive evidence that title to the land in question is vested in the appellant. As the register document of title in this case was produced in court the learned magistrate was justified in holding that the appellant was *prima facie* the owner of the land.

On the evidence at the trial it is clear that the appellant was the only applicant for the alienation of the land in question. There was no other applicant to whom it could have been alienated after the approval to the applicant lapsed on her failure to pay the amount \$4,327.50 within the specified time. But the State Authority did not seem to have any inten-

A tion of giving or alienating the land to anyone else other than the appellant. The fact that she was registered as proprietress in April 1968 necessarily raised the inference that the State Authority on the amount having been paid in October 1967 had given fresh approval. The reason for the provision relating to the lapse of approval under section 81(2) of the Code, in my view, is to enable the State Authority to give the land to someone else in the event the approved applicant does not want the land or is unable to pay the necessary fees under section 81(1). It was clearly not intended to impose any restriction on the State Authority's power of disposal.

B There is also another much more important reason why this appeal should be allowed. Under the C Torrens System the register is everything. So said S.K. Das on page 102 of his book on the Torrens System in Malaya. I need only refer to two Privy Council cases, *Creelman & Anor. v. Hudson Bay Insurance Company*⁽⁴⁾ and *Alan Frederic Frazer v. Douglas Hamilton Walker*⁽⁵⁾ which decided to the D same effect.

In *Creelman & Anor. v. Hudson Bay Insurance Company* which was an appeal from British Columbia, Lord Buckmaster delivering the judgment of the Judicial Committee said on page 197:

E "Their Lordships are unable to accede to either of these propositions. In their opinion the certificate of title referred to in section 22 of the Land Registry Act is a certificate which, while it remains unaltered or unchallenged upon the register, is one which every purchaser is bound to accept. And to enable an investigation to take place as to the right of the person to appear upon the register when he holds the certificate which is the evidence of his title, would be to defeat the very purpose and object of the statute of registration."

F In *Alan Frederic Frazer v. Douglas Hamilton Walker* which was an appeal from New Zealand Lord Wilberforce said on page 580:

"It is in fact the registration and not its antecedents which vests and divests title."

I would, therefore, set aside the judgment of the Appeal Court and restore the judgment of the trial Magistrate.

G As the appellant had been kept out of her land far too long already I would order the respondent to deliver vacant possession of the land within one month from today and pay the appellant the costs of this appeal and costs in the High Court.

H Raja Azlan Shah and Wan Suleiman FJJ. concurred.

Order accordingly.

Solicitors: Shearn, Delamore & Co.; A.K.J. D'Cruz.

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